

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 9353-2005

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SIMON MORGAN

First Respondent

and

ANN MORGAN

Second Respondent

Before:

Mr A N Spooner (in the chair)

Mr K W Duncan

Mr S Howe

Date of Hearing: 1st November 2011

Appearances

Stephen Battersby, solicitor of Jameson & Hill Solicitors, 72/74 Fore Street, Hertford SG14 1BY for the Applicant.

The First Respondent did not appear and was not represented.

The Second Respondent did not appear and was not represented.

JUDGMENT

Allegations

First Respondent

1. The allegation against the First Respondent was that:-
 - 1.1 On 27 January 2011 at Bradford Crown Court, having been found guilty on 12 January 2011 at Leeds Crown Court of six offences of theft, the First Respondent was sentenced to seven years imprisonment so compromising or impairing his integrity, his good repute and that of the profession contrary to Rules 1(a) and 1(d) of the Solicitors Practice Rules 1990 ("SPR") (all the offences having been committed prior to 2007).

Second Respondent

2. The allegation against the Second Respondent was that:-
 - 2.1 The Second Respondent was found by a jury at Leeds Crown Court on 12 January 2011 to have committed the acts complained of against her, the Second Respondent having been deemed unfit to plead. On 29 March 2011 the Court, her condition being untreatable, made an Order of Absolute Discharge. This justified the making of an Order against the Second Respondent under Section 43 of the Solicitors Act 1974 (as amended).

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:-

Applicant:

- Supplemental Rule 5, 7 and 8 Statement dated 9 May 2011;
- Crown Court Indictment;
- Certificate of Conviction of the First Respondent;
- Sentencing Comments dated 27 January 2011;
- Sentencing Comments dated 29 March 2011.

First Respondent

- None

Second Respondent

- None

Preliminary Matter

4. Mr Battersby informed the Tribunal that certain allegations against the First and

Second Respondents were set out in the Rule 4 (2) Statement dated 23 September 2005. He proposed proceeding on the basis of the Supplemental Rule 5,7 and 8 Statement dated 9 May 2011 following the Crown Court proceedings in respect of both Respondents.

5. Mr Battersby informed the Tribunal that the First Respondent had received a prison sentence of seven years and the Second Respondent had been deemed unfit to plead albeit the jury had accepted her guilt in relation to the alleged acts and an Order of Absolute Discharge had been made.
6. Mr Battersby invited the Tribunal to proceed on the basis of the Supplemental Statement but was mindful that if an appeal by the First Respondent was allowed and proved successful, the First Respondent could come back before the Tribunal and seek that any finding be set aside. If those circumstances arose, Mr Battersby confirmed that the Applicant would want to resurrect the originating application. Mr Battersby therefore asked that the originating application lie on the file and not be proceeded with without leave of the Tribunal.

The Tribunal's Determination on the Preliminary Matter

7. The Tribunal consented to those allegations set out in the Rule 4(2) Statement to lie on the file and that the originating application dated 23 September 2005 not be proceeded with without leave of the Tribunal.

Factual Background

8. The First Respondent was born on 3 October 1960 and admitted as a solicitor on 1 February 1986. At all material times he was the senior partner of Milners ("the firm") of Crown House, 81-89 Great George Street, Leeds, West Yorkshire, LS1 3BR with whom he had worked since 1988.
9. The Second Respondent was the wife of the First Respondent and was born on 3 June 1955. She was not a solicitor and was the practice manager of the firm at the material times having been employed by them since 1989.
10. The matters which gave rise to the proceedings came to light in July 2004. At that time the firm had three equity partners, the First Respondent, SB and GW with two salaried partners, CN and RK. Under the partnership agreement the First Respondent had been entitled to a 51% share of the profits with SB and GW each having an equal share of the remaining 49%. SB and GW had notified the Law Society of suspected misuse of office funds by the First and Second Respondents and as a result an inspection had been carried out at the firm's offices which had commenced on 21 July 2004 by Law Society Investigation Officers, David Rouse and Eric Fletcher ("the Officers").
11. The inspection had revealed that as at 30 June 2004 there had been a minimum shortage on the firm's client account of £676,733.82. There had been shortages from 1 January 2002 up to the date of the inspection which had fluctuated, the highest figure of £1,058,648.71 having been recorded as at 30 September 2003.

12. The minimum cash shortage had arisen entirely as a result of improper payments and transfers from client account. On some occasions when the office account had neared its overdraft limit or had been in need of replenishment to allow payments out to be made, transfers had been made from client account. These had not been allocated to any particular client ledger account. The ensuing payments from office account had often been for the benefit of the First and Second Respondents or their family members. The Second Respondent had been an authorised signatory for the office account but not for the client account. Personal payments for the benefit of the First and Second Respondents had also been made from client account.
13. Payments had been made from the firm's office account for the benefit of the First and Second Respondents between 28 March 2002 and 5 July 2004. These had contributed to an average monthly drawings figure of the First Respondent which had exceeded £40,000. This had been vastly in excess of the First Respondent's legitimate profit share from the partnership.
14. Among payments noted to have been made from client account for the benefit of the First and Second Respondents were:-
 - 14.1 £15,188.03 which represented a deposit on a Lamborghini Gallardo motor car on 21 June 2004;
 - 14.2 Four payments made direct to the Respondents' personal account between 15 May and 25 June 2002 which had totalled £49,700.
15. The Second Respondent, when spoken to briefly by the Officers on 22 July 2004 had admitted that all of the improper transfers and payments from client account had been made on her instructions. The head cashier of the firm, AR, who had executed many of the transactions had been told what to do by the Second Respondent. The Second Respondent had explained that the First Respondent had been unaware of the improper use of client funds and had believed that the First and Second Respondents' extravagant lifestyle had been funded by a private income which the Second Respondent had told him she had access to.
16. In addition to the Lamborghini motor car, the First and Second Respondents had a Ferrari and an Audi S8. They had lived in a house in a desirable suburb of Leeds which had been sold shortly after these matters had come to light for £2.2million. They had owned numerous works of art valued at £200,000 and had generally enjoyed an expensive lifestyle.
17. Accountants had been appointed by SB and GW for the purposes of litigation against the First and Second Respondents. They had prepared a list of drawings by the three equity partners for the two year period commencing 28 March 2002. During that period, payments from the firm's office account to the First Respondent had totalled £1,378,331.78 whereas SB had received payments totalling £117,444.48 and GW £102,900. As against the agreed partnership shares, these amounts had represented payments to the First Respondent of 86.22%, to SB of 7.34% and to GW of 6.44%. SB and GW had commenced proceedings against the Respondents in respect of monies wrongly taken from the firm.

18. The Second Respondent had admitted wrongdoing and that her behaviour had been dishonest. The First and Second Respondents had maintained that the First Respondent had been unaware of the Second Respondent's activities and had believed that the assets and lifestyle had been financed by the Second Respondent's private income.
19. A Law Society Emergency Resolution had been made on 19 August 2004 to intervene into the First Respondent's share of the practice but this had post dated the First Respondent's compulsory retirement from the firm on 17 August 2004 and it had not been necessary to put that into effect.
20. As a partner in the firm, the First Respondent must have realised that the monies drawn on his behalf were vastly in excess of those that he was legitimately entitled to. The First Respondent had produced no evidence to support his assertion that he had believed the Second Respondent to have a private income and had not had knowledge of the Second Respondent's financial affairs. The First Respondent's conduct had clearly been dishonest.

Witnesses

21. None.

Findings as to Fact and Law

First Respondent

22. **Allegation 1.1. On 27 January 2011 at Bradford Crown Court, having been found guilty on 12 January 2011 at Leeds Crown Court of six offences of theft, the First Respondent was sentenced to seven years imprisonment so compromising or impairing his integrity, his good repute and that of the profession contrary to Rules 1(a) and 1(d) of the Solicitors Practice Rules 1990 ("SPR") (all the offences having been committed prior to 2007).**
- 22.1 Mr Battersby referred the Tribunal to Rule 15 (2) of the Solicitors Disciplinary Proceedings Rules 2007 ("SDPR"):-

"A conviction for a criminal offence may be proved by the production of a certified copy of the Certificate of Conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."
- 22.2 Mr Battersby referred the Tribunal to the Certificate of Conviction in relation to the First Respondent, and to the sentencing comments of the Judge on 27 January 2011 in relation to the First Respondent as follows:-

"Simon Morgan, earlier this month you were convicted by the jury of six offences of theft at the conclusion of a trial lasting about five weeks. Counts one to three of the indictment related to the theft from the business of your partnership in a firm of solicitors, Milners, between 2002 and mid 2004. Over

that period of two and a half years there was unauthorised expenditure, in other words thefts, from the firm totalling £1.36million.

The three remaining counts, numbered four to six, related to the individual stealing of money from the firm's client account on separate occasions during those years. When Investigators from the Law Society became involved there was a shortfall of at least £676,000 in the client account.

There is no doubt that very considerable sums of money were stolen from the firm and from the client account. The stolen money was used for purposes such as visits to expensive hotels and restaurants, luxury motor cars, extravagant holidays and trips involving hiring a private jet, substantial house and garden improvements and furnishings and university fees, all exclusively for the benefit of yourself, your wife, and in some cases your children and members of your wife's family.

These were offences motivated by greed.”

“...On any view, this is a bad case of stealing substantial sums of money from a number of victims, including clients of the firm, over a long period of time purely to lead an extravagant lifestyle.”

- 22.3 The First Respondent had been convicted of six offences of theft and had been sentenced to seven years imprisonment. The Tribunal had been provided with the Certificate of Conviction to confirm this. The Tribunal had a duty to protect the public and the reputation of the solicitors' profession, including the maintenance of the public's confidence in that profession.
- 22.4 The First Respondent had compromised and impaired his integrity and his good repute and that of the profession contrary to his rules of professional conduct.
- 22.5 The Tribunal was satisfied so that it was sure and found the allegation proved on the facts and on the documents.

Second Respondent

23. **Allegation 2.1. The Second Respondent was found by a jury at Leeds Crown Court on 12 January 2011 to have committed the acts complained of against her, the Second Respondent having been deemed unfit to plead. On 29 March 2011 the Court, her condition being untreatable, made an Order of Absolute Discharge. This justified the making of an Order against the Second Respondent under Section 43 of the Solicitors Act 1974 as amended.**
- 23.1 Mr Battersby informed the Tribunal that the Second Respondent had not been convicted and there was therefore no Certificate of Conviction. There had been reference to the Second Respondent's part in these proceedings in both sets of sentencing comments and Mr Battersby referred the Tribunal to those documents. He confirmed that he had served a Civil Evidence Act Notice on the Second Respondent and had invited her to accept the evidence in the sentencing comments.

- 23.2 Mr Battersby referred to the specific comments of the Judge on 29 March 2011 as follows:-

“...Here we have someone who has been found to have done the acts of which she is stood accused, but is not fit to be tried and is apparently suffering, as I have found on the balance of probabilities, from a condition that makes her unfit to be tried and yet there does not seem to be anything that can be done to try and alleviate that condition...”

“There is medical reason for her not to be present, I shall therefore order that in respect of this outstanding matter and the findings of the jury that she did the acts giving rise to the charges on the indictment upon which she is charged, there will be orders of absolute discharge in respect of all those matters.”

- 23.3 Mr Battersby confirmed that the only option available in relation to the Second Respondent was the making of a Section 43 Order.
- 23.4 The Tribunal had regard to the sentencing comments of the Judge on 29 March 2011 in relation to the Second Respondent and was satisfied so that it was sure that the Second Respondent had done the acts giving rise to the charges on the indictment upon which the Second Respondent had been charged in the Crown Court. The Tribunal found the allegation proved on the facts and on the documents.

Previous Disciplinary Matters

24. None recorded against either Respondent.

Mitigation

25. Neither the First nor the Second Respondent had submitted any mitigation to the Tribunal.

Sanction

26. The Tribunal had found the allegations proved against the First and Second Respondents respectively. The Tribunal had regard to the Supplemental Statement dated 9 May 2011 and the supporting documents.
27. The Tribunal was satisfied that the First Respondent had compromised and impaired his integrity and his good repute and that of the profession contrary to Rules 1(a) and 1(d) of the SPR as he had been found guilty on 12 January 2011 of six offences of theft and he had been sentenced to seven years imprisonment.
28. In relation to the Second Respondent, the Tribunal had been satisfied that she had been found by a jury on 12 January 2011 to have committed the acts complained of against her and that as she had been deemed unfit to plead, her condition having been untreatable, on 29 March 2011 the Court had made an Order of Absolute Discharge.
29. These were serious matters and it was incumbent upon the Tribunal to protect the public and the reputation of the legal profession. Both Respondents' conduct had

damaged the reputation of the profession and diminished the trust the public placed in the profession.

30. The Tribunal ordered that the First Respondent be struck off the Roll of Solicitors.
31. The Tribunal made a Section 43 Order against the Second Respondent.

Costs

32. Mr Battersby acknowledged that he had proceeded on the basis of his supplemental statement only but submitted that a considerable amount of work had been done in relation to the original application. Two schedules of costs were handed in by Mr Battersby; one for the original application and a second for the supplemental application. He said that it was a matter for the Tribunal as to whether any allowance was made regarding the costs of the original application.
33. In response to a question from the Tribunal, Mr Battersby said that if it was the Tribunal's view that since the original Rule 4(2) Statement had been left to lie on the file, then might it not be appropriate for the costs of that application to lie with it, and he did not seek to persuade the Tribunal from that view.
34. Mr Battersby confirmed that there had been no communication from either Respondent regarding means. He had sent the schedules of costs to both Respondents prior to the substantive hearing but had received no information regarding their respective financial circumstances.
35. The Tribunal Ordered that the First and Second Respondents be jointly and severally liable for costs fixed in the sum of £3,250. The Tribunal commented that the first schedule of costs in relation to the original application should lie on the file.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, Simon Morgan, solicitor, be **STRUCK OFF** the Roll of Solicitors and it further Ordered that he be jointly and severally liable to pay the costs of and incidental to this application and enquiry fixed in the sum of £3,250.00.
37. The Tribunal Ordered that as from 1st day of November 2011 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Ann Morgan of End Cottage, Main Street, Bilbrough, York, YO23 3PH;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Ann Morgan;
 - (iii) no recognised body shall employ or remunerate the said Ann Morgan;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Ann Morgan in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Ann Morgan to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Ann Morgan to have an interest in the body;

And the Tribunal further Ordered that the said Ann Morgan be jointly and severally liable to pay the costs of and incidental to this application and enquiry fixed in the sum of £3,250.00.

Dated this 18th day of November 2011
On behalf of the Tribunal

A N Spooner
Chairman